Office of the Attorney General
Washington, D. C. 20530

December 11, 1974

MEMORANDUM TO HEADS OF ALL
FEDERAL DEPARTMENTS AND AGENCIES

Re: Preliminary Guidance concerning the 1974 Freedom of Information Act Amendments, P.L. 93-502, enacted November 21, 1974.

Introduction

By action of the Senate on November 21st in overriding the President's veto of the enrolled bill H.R. 12471, several important amendments have been made to the Freedom of Information Act, 5 U.S.C. 552. Most of these will have some effect upon your agency.

The new amendments (hereinafter the "1974 Amendments") will become effective on February 19, 1975. It is essential that every agency take certain actions as soon as possible, as discussed below, in order to be in compliance with the 1974 Amendments when they become effective.

Outline of Discussion

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A. Freedom of Information Act prior to 1974 Amendments.
B. 1974 Amendments to the Act (P.L. 93-502).
C. Freedom of Information Act as now amended.
D. Summary of Principal Changes made by 1974 Amendments.

Discussion

The discussion below is in the nature of advice and assistance rather than a directive. While it is intended to apply generally to all federal agencies (except to the extent an agency may be subject to unique provisions of law, e.g., 39 U.S.C. 410, 412),*/ some recommendations may not fit the circumstances of a particular agency.

1. Time Limits for Agency Determinations. Agencies must amend their regulations to conform to the provisions in the 1974 Amendments which prescribe administrative time limits for processing requests for access to their records. Basically, these provisions call for an initial determination to be made on any such request within 10 working days (usually two weeks) after its receipt. In case of an appeal from an initial denial, a determination on the appeal is to be made by the agency within 20 working days (four weeks) after receipt of the appeal. After any agency determination to comply in whole or part with a request for records, whether made initially or on appeal, the records shall be made available"promptly."

These time limit provisions apply to requests and to appeals that are received by agencies on or after Wednesday, February 19, 1975. Agency regulations under the Act should be revised to reflect these provisions and the revisions should be published in the Federal Register and distributed to all concerned agency personnel before that date. The discussion which follows is chiefly concerned with the impact of the time limits on requests which, for one reason or another, an agency finds difficult to process properly within such periods.

It is important to note that these time limits run from the date of "receipt." The experience of the Justice Department

*/These provisions modify the application of the Freedom of Information Act to records of the Postal Service.

with voluntarily adopted time limits for acting on requests and appeals for our own records has indicated that much time can be lost in mail rooms and elsewhere in routing requests and appeals to those who must act upon them. Such delays can be sharply reduced by explicit and well-conceived instructions to requesters on how to address their requests and their appeals. It is strongly recommended that such instructions be set forth in agency regulations, as well as in any other pertinent agency information and guidance materials that may be prepared. While failure to comply with such reasonable regulations will not necessarily disqualify a request from entitlement to processing under the Act, it will probably defer the date of "receipt" from which the time limitations are computed, to take account of the amount of time reasonably required to forward the request to the specified office or employee. 1/ Such regulations designed to facilitate processing must not, of course, be used to protract or delay it.

Agencies should also consider the adoption of devices and the designing of procedures to speed processing of requests. It might be desirable, for example, to specify in agency regulations and guidance that FOIA requests be clearly identified by the requester as such on the envelope and in the letter. Similarly, agency personnel should be required to mark FOIA requests and appeals conspicuously so that they may be given expeditious treatment. Of course, the new time limits also mean that an efficient system of date-stamping for incoming matter is essential.

The 1974 Amendments contain two provisions for extension of the foregoing time limits. One authorizes administrative extensions by giving requesters written notices with prescribed contents in three types of "unusual circumstances" which are specified in the amendments. It is clear that such extensions cannot exceed ten working days in the aggregate, so that only one ten-day extension can be invoked by the agency, either at the initial or the appellate stage. Neither the language

1/ Where such delay has occurred, it would be desirable to provide for acknowledgment of effective receipt. Such acknowledgment should also be provided where delay is caused in the mails, or by any other means of which the requester is likely unaware.

of the statute, however, nor the legislative history specifically precludes the taking of more than one extension where the circumstances justify, so long as the ten-day maximum is not exceeded with respect to the entire request. Logic favors the latter interpretation, since the same circumstances which make a particular request difficult to process at the initial stage frequently complicate the appeal as well. Accordingly, we interpret the statute to permit more than one extension, either divided between the initial and appeal stages or within a single stage, so long as the total extended time does not exceed ten working days with respect to a particular request.

Agencies should carefully consider whether they should make some provisions in their regulations concerning (a) who controls the use of the 10-day extension and (b) its allocation to the initial stage, the appeal stage, or partly to one and partly to the other. Such provisions, of course, would only operate in the unusual circumstances specified in the statute. Subject to this condition it would appear permissible for agency regulations to provide for distribution of the ten days on a case-by-case basis, or by restricting any extension at the initial stage to five days absent special showing (so as to reserve five days for the appeal stage), or in some other manner. Agencies should also be prepared to instruct their staffs on the form, contents, and timeliness of extension notices in the light of the statutory requirements.

The second provision for time extension in the 1974 Amendments authorizes a court to allow an agency "additional time to complete its review of the records" if the government can show exceptional circumstances and that the agency is exercising due diligence in responding to the request. In cases where an agency believes that this provision would probably lead to a judicial extension of its time if the agency were to be sued immediately, the agency may in the interest of avoiding unnecessary litigation and exploring fully the scope of a possible administrative grant of access, wish to suggest to the requester the possibility of agreeing

with the agency upon a specific extension of time. In preparing its regulations on time limits, an agency should consider (a) who within the agency should give attention to the considerations discussed in this paragraph, and (b) the extent to which communications or agreements with requesters under this paragraph should be recorded for such bearing as they may have on possible litigation.

The legal consequence provided in the 1974 Amendments for an agency's disregard of the prescribed administrative time limits (i.e., the 10 and 20 day limits and any up-to-10 days extension effected by notice to the requester) is that the requester may sue at once, without resort to further administrative remedies. The Act as amended expressly provides that the requester "shall be deemed to have exhausted his administrative remedies" in case the agency fails to comply with applicable time limits. THIS MEANS THAT IF THE 10-DAY TIME LIMIT FOR INITIAL DETERMINATIONS (TOGETHER WITH ANY PERMISSIBLE EXTENSION OF THIS LIMIT AS DISCUSSED ABOVE) IS NOT COMPLIED WITH, THE AGENCY MAY HAVE LOST THE 20 DAYS OR MORE THAT WOULD OTHERWISE HAVE BEEN AVAILABLE TO IT IN THE EVENT OF A TIMELY-ISSUED DENIAL AND AN APPEAL. Thus, every effort should be made to issue an initial determination -- even one with qualifications or conditions 2/ -- within the required time. Where it is necessary to find and examine the records before the legality or appropriateness of their release can be assessed, and where, after diligent effort, this has not been achieved within the required period, the requester may be advised in substance that the agency has determined at the present time to deny the request because the records have not yet been found and/or examined; that this determination will be reconsidered as soon as the search and/or examination is complete, which should be within ____ days; but that the requester may, if he wishes, immediately file an administrative appeal.

In the event an agency fails to issue a timely determination and is sued, it should nevertheless continue to process

2/ The qualifications or conditions cannot be so extensive as to render the response meaningless because such a response would not constitute the required "determination".

the request. To the extent that the request is granted, the suit may become moot; to the extent the request is denied, the government will be able to prepare a defense on the merits.

If an initial denial in whole or part is issued by an agency after suit has been filed, and the requester administratively appeals, the agency should, unless otherwise instructed by its counsel or by the court, proceed to process the appeal. Moreover, agencies may wish to consider making provisions for the initiation of an appeal upon their own motions in such circumstances; otherwise, failing an appeal by the requester, the agency may be committed in litigation to a position it does not genuinely support. If suit is filed while an appeal is pending, whether or not the suit is premature, the agency should normally continue to process the appeal.

The time limit provisions of the 1974 Amendments appear to presuppose that agencies will have a basically two-step, rather than a single-step, procedure in their regulations, i.e., that they will provide for an initial determination whether to grant or deny access, followed by an administrative appeal. While there is nothing in the 1974 Amendments which expressly forbids an initial determination that is administratively final, it seems clear that the vast majority of agencies will continue to use some form of two-step procedure, not only because it permits the correction of errors and avoidance of unnecessary litigation but also because, under the 1974 Amendments, it makes available an additional 20 days for agency consideration of the request. Agencies contemplating changes in their regulations from a single-step to a two-step procedure, or changes to a different form of two-step procedure, should note that the 1974 Amendments contemplate an administrative "appeal". This means that the agency official charged with acting on appeals must be different from the official responsible for initial denials.

Some agency regulations now prescribe a period of time, such as 30 days, within which a requester must file an appeal, ordinarily running from the requester's receipt

of the denial letter. The 1974 Amendments contemplate that an initial determination to furnish records will be dispatched within the time limits discussed above, and that the records will be furnished either at the same time or "promptly" thereafter. At the time of the initial determination there may be some uncertainty on the part of the requester, or even on the part of the agency, as to the precise extent of the materials being made available and being denied. Accordingly, if an agency's regulations as revised contain a time limit for the filing of an appeal,3/ it is suggested that the period run from receipt of the initial determination (in cases of denials of an entire request), and from receipt of any records being made available pursuant to the initial determination (in cases of partial denials). Such a provision would relate only to the end, not to the beginning, of the period for the requester to file an appeal; it would in no way interfere with the right to file an appeal immediately after any initial determination involving any degree of denial. Such a provision should promote fairness, help reduce premature and unnecessary appeals, and minimize technical questions about the timeliness of appeals.

2. Index Publications. Under subsection (a)(2) of the Act prior to the 1974 Amendments, each agency has been required to "maintain and make available for public inspection and copying a current index providing identifying information for the public" as to the agency's so-called (a)(2) materials, i.e., certain final opinions and orders, statements of policy and interpretation, and administrative staff manuals and instructions. Under the 1974 Amendments, this index will be required to be published promptly at quarterly or more frequent intervals and distributed, unless the agency determines by order published in the Federal Register that such publication would be unnecessary and impractical, in which case copies of the index shall be provided on request at duplication

3/ The establishment of an explicit time limit is not mandatory. In its absence, a "reasonable time" would presumably be allowed. Such a disposition, however, increases uncertainty and hence litigation.

cost. Therefore, on or before February 19, 1975, or "promptly" thereafter, each agency must publish the required index, or must adopt and publish in the Federal Register an order containing the determination referred to above. As indicated in the Conference Report (Senate Report 93-1200 of October 1, 1974 at p. 7) commercial publication may satisfy the publication requirement if the agency makes the publication readily available for public use.

If an agency already publishes or plans to publish indexes to some of its (a)(2) materials in compliance with the above publication requirement, but determines that it is unnecessary and impractical to publish its indexes of the remainder, there is apparently no objection under the 1974 Amendments to using a combination of publication and the statutory alternative just described.

Recent court decisions have left some confusion as to what constitutes (a)(2) materials.[4/] If an agency reasonably maintains that certain types of records are not covered, it may of course properly decline to publish them. In case of doubt, it may accompany its publication of the index or its Federal Register statement with the disclaimer that its action is being taken for the convenience of possible users of the materials, and does not constitute a determination that all of them are within subsection (a)(2) of the Act. As to what constitutes an acceptable index, consult the prior Justice Department guidance.[5/]

3. Uniform Agency Fees for Search and Duplication. The 1974 Amendments make significant changes in the law pertaining to the fees which an agency may charge for services performed for requesters under the Act. Each agency must

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[4/] See, e.g., Grumman Aircraft Engineering Corp. v. Renegotiation Board, 482 F.2d 710 (D.C. Cir. 1973), cert granted upon the government's petition and now pending; Tax Analysts and Advocates v. IRS, 362 F. Supp. 1298 (D.D.C. 1973), affirmed _____ F. 2d _____ (1974). See also Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act, June 1967, at pp. 20-22.

[5/] Attorney General's Memorandum, supra, at pp. 20-22.

"promulgate regulations, pursuant to notice and receipt of public comment, specifying a uniform schedule of fees applicable to all constituent units of such agency." This means that agencies should, in accordance with 5 U.S.C. 553, publish in the Federal Register a Notice of Proposed Rule Making before January 13, 1975, containing a proposed uniform schedule of fees to become effective on February 19th, 1975; and then, after consideration of public comment, publish the regulations themselves as they will become effective on February 19th.

Since by reason of these procedural requirements, the fee schedule regulations involve more "lead time" than the other regulation changes which the 1974 Amendments make necessary, it may be desirable to handle them separately, under an accelerated timetable. Of course provisions assigning functions and prescribing procedures for administration of the fee schedule need not be contained in the schedule itself, and may be reserved for inclusion in the other Freedom of Information regulations.

In providing for the administration of fee schedules, agencies may wish to consider whether and when they will furnish estimates of fees, and the circumstances in which they will request payment of estimated or incurred fees before the work is done or the materials transmitted. Since requesters will be financially liable for fees after the requested services have been performed, there is a need for some device to protect members of the public from unwittingly incurring obligations which far exceed their expectations. It is of course not possible simply to advise requesters of substantial costs and await their permission to proceed, since this process would consume much of the 10-day reply period. The problem might be met by including a provision in the agency's regulations to the effect that, unless the request specifically states that whatever cost is involved will be acceptable, or acceptable up to a specified limit that covers anticipated costs, a request that is expected to involve assessed fees in excess of $_____ will not be deemed to have been received until the requester is advised (promptly on physical receipt of the request)

of the anticipated cost and agrees to bear it. There is some question whether such a provision can be effective to toll the statutory time period, but in light of the need to protect the public against large unanticipated expenses, and in light also of the fact that the requester can avoid all delay by specifying in his request that all costs (or costs to a specified limit) will be accepted, our view is that such provisions are likely to be sustained.

A separate problem is the need in some cases for adequate assurance that the requester will pay the fees where they are substantial. Of course, if a substantial public good is accomplished by the request, the agency may under the 1974 Amendments simply waive the fees. But where that provision is not to be applied, means to assure payment should be considered. This might be achieved by a requirement in the regulation that when the anticipated fees exceed $ _____, a deposit for a certain proportion of the amount must be made within _____ days of the agency's advising the requester.

The kinds of services for which fees may be charged under the 1974 Amendments are limited to search and duplication. Agencies may thus no longer seek reimbursement (a) for time spent in examining the requested records for the purpose of determining whether an exemption can and should be asserted, (b) for time spent in deleting exempt matter being withheld from records to be furnished, or (c) for time spent in monitoring a requester's inspection of agency records made available to him in this manner.

Search services are services of agency personnel -- clerical or, if necessary, of a higher salary level -- used in trying to find the records sought by the requester. They include time spent in examining records for the purpose of finding records which are within the scope of the request. They also include services to transport personnel to places of record storage, or records to the location of personnel for the purpose of search, if they can be shown to be reasonably necessary. The legislative history of the 1974 Amendments indicate that, when computerized record systems are involved, "the term 'search' would . . . not be limited to standard record-finding, and in these

situations charges would be permitted for services involving the use of computers needed to locate and extract the requested information." Senate Report No. 93-854, May 16, 1974, p. 12.

Search fees are assessable even when no records responsive to the request, or no records not exempt from disclosure, are found. It is recommended, however, that requesters be charged for unsuccessful or unproductive searches only where they have been given fair notice that this may occur. Such notice should be plainly set forth in an agency's regulations. Of course, where the cost of search is small its unproductiveness is persuasive ground for waiver.

Duplication includes costs associated with the paper and other supplies used to prepare duplicates made to comply with the request and the services of personnel used in such preparation.

Where an agency undertakes, either voluntarily or under some other statute, to perform for a requester services which are clearly not required under the Freedom of Information Act, -- e.g., the formal certification of records as true copies, attestation under the seal of the agency, creation of a new list, tabulation or compilation of information, translation of existing records into another language -- the question of fees should be resolved in the light of the federal user charge statute, 31 U.S.C. 483a, and any other applicable law. If for reasons of convenience an agency elects to include charges for such services in the fee schedule required to be promulgated by the 1974 Amendments, it should make clear the authority other than the Freedom of Information Act upon which such charges rest.

The amount of fees is ordinarily to be expressed as a rate per unit of service. The 1974 Amendments contain three general criteria: (a) the fees must provide for recovery of only the "direct costs" of search and duplication services, (b) they must be "reasonable standard" charges, and (c) they must be waived or reduced where the agency determines such action would be in the public interest because furnishing the information "can be considered as primarily benefiting the general public". The reference to

"direct costs" should be taken to mean that no agency overhead expense should be allocated to the services used in conducting a search. This would exclude such items as utilities, training expenses and management costs (except for management personnel directly involved in performing or supervising the particular search). If, for example, air freight or air express is used to transfer records at field offices to the office processing the request in order that the search can be completed and a determination made within applicable time limits, the air haul charge, but probably not the cost of ordering such transportation and processing payment, may be considered to be direct costs.

The requirement for "reasonable standard" charges should be taken to mean that the actual rates to be charged must be stated in dollars and cents or otherwise definitively indicated -- as, for example, by reference to publicly filed tariffs. It precludes special rates based upon negotiation, 6/ upon increases in federal personnel pay rates not reflected in an amended schedule, or upon other factors not incorporated in the schedule. There is, however, no requirement that the schedule contain only a single rate for personnel time. Legislative reference to the "direct costs" of search indicates that where there are sharp differences in the salaries of the personnel needed to conduct various types of searches which the agency may conduct, the schedule may set forth separate scales -- e.g., one for clerical time and one for supervisory or professional time. The applicable rates may be determined after considering the pay scales, converted to hourly rates, of the numbers and grades of the personnel who would be assigned to perform the required services. Recognizing that some mix of personnel may be involved, it would seem that reasonable approximations of costs will satisfy the legislative requirement for "reasonable" standard charges.

The remaining legislative factor in the amount of fees is the provision concerning waiver or reduction, noted above. Either the fee schedule or the other agency regulations under the Act as amended should clearly assign the function of determining, both in connection with initial actions and at the appeal stage, whether such waivers or reductions should be made and the amount of any such reduction.

6/ This does not preclude a negotiated settlement of a dispute over the fees for a particular request.

4. Procedures on Requests for Classified Records. Passing for the purposes of this memorandum any constitutional questions, requests for documents that raise questions under exemption 1, as amended, may often require more detailed administrative processing at both the initial and appeal stages than was required under the decision in Environmental Protection Agency v. Mink, 410 U.S. 73 (1973). Such processing will nonetheless be subject to the new statutory time limits. The scope of the problem which this presents is not entirely clear at this time. All agencies which generate or hold substantial amounts of classified documents should immediately begin considering a range of procedures for accommodating to the statutory changes. The Department of Justice solicits the views of affected agencies in this regard and anticipates issuing more detailed guidance for the processing of requests for classified documents under the 1974 Amendments prior to their effective date.

5. Requirements for Annual Report. The 1974 Amendments require each agency to file with the Congress a detailed Annual Report on March 1 of each year, covering administration of the Freedom of Information Act during the prior calendar year. With respect to the report due on March 1, 1975, some of the information called for in the Amendments will not be available, since the Amendments were not in effect during calendar 1974. Agencies should make as complete a Report as possible on the basis of the information at hand. It is not our view that the Congress intended agencies to conduct interviews or detailed historical research to develop information not recorded at the time. Agencies should begin at once to develop procedures for compiling the information which the Annual Reports must contain, and these should be in place no later than January 1, 1975 so that the Report for calendar 1975 will be complete. We recommend that these procedures be designed to accumulate, in addition to the other information required, data on the costs of administering the Act.

6. Assignment of Responsibility to Grant and Deny. Agency regulations should leave no uncertainty as to who has the responsibility for acting upon requests under the Act. Responsibility means the duty and the authority to act; an

assignment of either the duty or the authority normally carries with it the other, except as regulations may otherwise provide. When an agency employee or official receives a request which exceeds his authority to grant or deny, the requester should be referred to the official or unit which has authority under the agency's regulations. 7/

The employee or official who denies a request is referred to in several places in the 1974 Amendments. Any notification of denial of a request for records must "set forth the names and titles or positions of each person responsible for the denial of such request." §552(a)(6)(C). The required Annual Report must include "the names and titles or positions of each person responsible for the denial of records requested, . . . and the number of instances of participation for each." §552(d)(3). The so-called sanctions provision states that when a court makes a written finding as to possible arbitrary or capricious withholding by agency personnel, the Civil Service Commission shall promptly initiate a proceeding to determine "whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding." §552(a)(4)(F).

The common element in these provisions is the characterization of an agency employee or official as the person "responsible" or "primarily responsible" for a denial. It is therefore incumbent upon an agency to fix such responsibility clearly in its regulations by confining authority to deny, both on initial determinations and on appeals, to specified officials or employees. In view of the time limits discussed above, it would appear impracticable to specify such officials or employees by name, thereby preventing action during their absence; specifications by organizational title should be so drawn as to include both regular incumbents and persons acting in their stead.

7/ As a matter of courtesy, if a request is misdirected the agency employee receiving it should himself route it to the proper official under the agency's regulations. The requester should be informed of this action and advised that the time of receipt for processing purposes will be deemed to run from the receipt by the proper official.

It is not necessary that the head of the agency be the official designated to determine all appeals. The reference to an "appeal to the head of the agency" in the provision concerning time limits for initial determinations must be read in conjunction with the three provisions concerning "responsible" officials referred to above, particularly the last two sentences of the sanctions provision. 8/ Coupled with the impracticability of running all appeals through Cabinet officers in certain departments, these provisions indicate that the head of an agency may, by regulation, delegate to another high official the function of acting on his behalf with respect to appeals.

Care should be taken to provide safeguards against confusion between the person who is authorized to deny access and the individuals or committees which assist him by providing information, furnishing legal or policy advice, recommending action, or implementing the decision. Care should also be taken to avoid the situation in which the official or employee whose signature appears on a notification of denial as ostensibly the responsible person is in fact acting on the orders of his superior. In such a case, the notification should identify the superior as the responsible person, with the subordinate signing "by direction" or with other appropriate indication of his role.

7. Substantive Changes. The 1974 Amendments include three provisions whose nature is "substantive", in the sense that they affect what records are subject to compulsory disclosure under the Act, rather than how requests for records shall be processed or litigated. These are a revision of the 1st exemption (pertaining to documents classified

8/ "The [Civil Service] Commission, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officeror employee or his representative. The administrative authority shall take the corrective action that the Commission recommends." §552(a)(4)(F).

under an Executive Order for reasons of defense or foreign policy), a revision of the 7th exemption (investigatory law enforcement records), and a provision on the availability of "reasonably segregable" portions of records from which exempt matter has been deleted.

While these three substantive changes, like the rest of the 1974 Amendments, do not become effective until February 19, 1975, it would be parsimonious and ultimately unwise to act before that time as if they were not in prospect. Each agency should take these changes into account to the best of its ability even before they become effective, particularly in its processing of requests and appeals and in assisting in the conduct of litigation. The application of these revisions will be the subject of a subsequent Justice Department memorandum.

8. Miscellaneous Matters. The 1974 Amendments replace the requirement that a request be for "identifiable records" with the requirement that it be one which "reasonably describes such records". §552(a)(3)(A). Agency regulations which contain provisions that parallel the old "identifiable records" language should be revised accordingly. A broad categorical request may or may not meet the "reasonably describes" standard; an agency receiving such a request may communicate with the requester to clarify it.

The 1974 Amendments require that any adverse initial determination set forth the reasons therefor and a notice of the requester's appeal rights, and that any adverse determination on appeal give notice of the requester's rights of judicial review. §552(a)(6)(A). Agency regulations should be amended to reflect these new requirements.

In the event of suit under the Act, the government's time to answer is reduced from the 60 days generally available to the government in civil actions to 30 days "unless the court otherwise directs for good cause shown". §552(a)(4)(C). Upon termination of a suit under the Act in which the requester has "substantially prevailed", the court may assess"reasonable attorneys fees and other litigation costs reasonably incurred". §552(a)(4)(E). While neither

of these changes necessarily calls for a revision of agency regulations, each can have an impact on agency operations: If a judicial extension of the 30-day time period is to be sought, the agency is likely to be called upon to provide information as to the facts and circumstances believed to constitute "good cause"; and if attorney's fees are assessed, they will be normally charged to the agency whose withholding of records was at issue. Needless to say, the attorney's fee provision increases substantially the likelihood that an agency will be sued when it issues a denial having weak or doubtful justification.

Each agency should carefully examine the text of the 1974 Amendments to see if there are impacts upon its own regulations or operations which may not apply to other agencies and which are not discussed herein. It should also be noted that the Amendments include a redefinition of "agency" for purposes of the Act, set forth in the new §552(e), which extends the Act's coverage to some entities not considered agencies for purposes of other provisions of the Administrative Procedure Act.

As a general policy in cases where difficult problems are encountered as to such matters as the scope of the request, the time to process it, or the fees involved, agencies are encouraged to consider telephoning the requester to seek an informal accommodation, which should ordinarily be promptly confirmed in writing.

9. Further Action. The administrative and reporting requirements of the new Amendments, together with the relatively brief time limits imposed, demand the closest internal coordination of agency efforts, both in designing compliance with the 1974 revisions and in administering the Act after they become effective. To achieve this, agencies should consider establishing, perhaps on a temporary or ad hoc basis, an internal board or committee which would include talent at appropriate levels in the areas of law, public information, program operations, records management, budget and training.

The Justice Department will distribute before the effective date of the 1974 Amendments an interpretive and

advisory "Analysis", primarily addressed to the three "substantive" provisions referred to in item 7 above, but perhaps containing further guidance on procedural questions such as those discussed herein. Until that is issued, it would be appreciated if requests from agencies for advice and assistance concerning the Act be kept to a minimum. However, comments on this Preliminary Guidance memorandum are solicited, with a view to making desirable additions and changes.

Wm B Saxbe

ATTORNEY GENERAL

Attachments